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Attorney for Gabriel Zendejas-Chavez

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GABRIEL ZENDEJAS-CHAVEZ,

Defendant.

No. CR 18-cr-173-GW

RENEWED MOTION TO COMPEL BRADY AND  
HENTHORN INFORMATION

Defendant Gabriel Zendejas-Chavez, by and through his counsel, Meghan Blanco, will renew its motion for an order that the government produce exculpatory and impeaching materials, local CI files, central and confidential files, and personnel files for confidential informants ("CIs"), cooperating-defendants ("CDs") and law enforcement agents expected to testify as witnesses in these

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proceedings and/or law enforcement agents who have communicated with  
CIs/CDs between January 2013 and present.

Respectfully Submitted,

Dated: July 7, 2022

//s// Meghan Blanco  
MEGHAN BLANCO  
COUNSEL FOR DEFENDANT  
GABRIEL ZENDEJAS-CHAVEZ



1 For the reasons outlined herein, exculpatory and impeaching  
2 materials, including materials from personnel files, CDCR  
3 confidential files and central files, and local law enforcement CI  
4 files, for law enforcement agents and confidential  
5 informants/cooperating co-defendants ("CIs" and "CDs") who are  
6 expected to testify as witnesses in these proceedings and/or law  
7 enforcement agents who have communicated with testifying CIs and CDs  
8 are relevant to the credibility and reliability of law enforcement  
9 and CI/CD testimony that the government may present at pre-trial  
10 hearings and/or trial.

11 II. ARGUMENT

12 A. Upon request, a prosecutor has the duty to review the files of  
13 his or her agents for exculpatory or impeaching information.

14 The Due Process Clause of the Fifth and Fourteenth Amendments of  
15 the United States Constitution require that the government disclose  
16 exculpatory evidence to the defendant. *Kyles v. Whitley*, 514 U.S.  
17 419 (1995); *Giglio v. United States*, 405 U.S. 150 (1972); *Brady v.*  
18 *Maryland*, 373 U.S. 83 (1963). Exculpatory evidence includes all  
19 evidence which bears on the credibility or reliability of witnesses.  
20 See *United States v. Feola*, 651 F. Supp. 1068, 1135 (S.D.N.Y. 1987).  
21 In sum, the law requires that the defense be provided with any and  
22 all information regarding prior material acts of misconduct by  
23 witnesses. See *United States v. Rosner*, 516 F. 2d 269 (2nd Cir.  
24 1975), cert. den. 427 U.S. 911 (1976); *United States v. Seijo*, 514  
25 F.3d 1357 (2nd Cir. 1975), cert. den. 429 U.S. 1043 (1977); *United*  
26 *States v. Stroop*, 129 F.R.D. 269 (E.D.N.C. 1988). The Ninth Circuit  
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28

1 has stated that the scope of the *Brady, supra*, doctrine is broad,  
2 and requires "disclosure of evidence that in any way may be  
3 exculpatory." *United States v. Miller*, 529 F.2d 1125, 1128 (9th  
4 Cir.) cert. den. 426 U.S. 924 (1976). The United States Supreme  
5 Court has emphasized that prosecutors should err on the side of  
6 disclosure Because we are dealing with an inevitably imprecise  
7 standard, and because the significance of an item of evidence can  
8 seldom be predicted accurately until the entire record is complete,  
9 the prudent prosecutor [or court] will resolve doubtful questions in  
10 favor of disclosure. *United States v. Agurs*, 427 U.S. 97, 108  
11 (1976). In *United States v. Henthorn*, 931 F.2d 29 (9th Cir., 1991),  
12 the Ninth Circuit held that, upon request, a prosecutor has the duty  
13 to review the files of his or her agents for exculpatory or  
14 impeaching information. The obligation is placed upon the prosecutor  
15 by the fact of a request, and there is no requirement for a  
16 threshold showing of materiality to the defense. All personnel files  
17 which contain complaints or allegations (whether sustained or not)  
18 involving perjurious conduct, dishonesty, improper law enforcement  
19 practices, or other conduct which could be used to impeach the  
20 officer must be disclosed. In *Kyles v. Whitley, supra*, the United  
21 States Supreme Court reminded both the Government and courts  
22 reviewing discovery issues that convictions will be reversed under  
23 the *Brady, supra*, rule unless prosecutors use a suitably broad  
24 standard of materiality. The

1 Kyles court emphasized that an important type of exculpatory  
2 evidence is that which can be used to attach the thoroughness and  
3 even the good faith of the investigations undertaken.

4 B. The following materials that are in the possession of the  
5 government and/or its agents, including portions of the  
6 personnel records of law enforcement agents, CDCR confidential  
7 files and central files, and local law enforcement CI files,  
8 for law enforcement agents and confidential  
9 informants/cooperating co-defendants ("CIs" and "CDs") that the  
10 government intends to call as witnesses during these  
11 proceedings and/or who communicated with CIs/CDs, are relevant  
12 both to the credibility of the law enforcement witnesses and  
13 CIs/CDs.

14 1. All documents contained in CDCR central and confidential  
15 files that reference any allegation or defendant in this case from  
16 January 2013 through present;

17 2. Any records of reports, complaints and/or subsequent  
18 investigation of reports and/or complaints involving alleged  
19 falsification of evidence;

20 3. Any records of reports, complaints and/or investigation of  
21 reports and/or complaints involving alleged violation of  
22 constitutional rights;

23 4. Any records of reports, complaints and/or investigation of  
24 reports and/or complaints involving alleged preparation and/or  
25 filing of a false report, statement or other document and/or  
26 complicity in the preparation and/or filing thereof;

1           5. Any records, complaints, and/or investigation of reports  
2 and/or complaints involving improper law enforcement practices,  
3 including, but not limited to, the use of physical and/or  
4 psychological coercion and/or benefits and/or promises of leniency  
5 to defendants and/or witnesses and/or victims;

6           6. Any records, complaints, and/or investigation of reports  
7 and/or complaints involving improper law enforcement practices in  
8 the handling or use of informants;

9           7. Any records of reports, complaints, and or subsequent  
10 investigation of reports and/or complaints involving allegations of  
11 giving false testimony and/or agreeing that others give false  
12 testimony in administrative hearings, courtroom testimony, the  
13 swearing out of warrants or other court applications and/or anyother  
14 instance where representations were provided under oath;

15           8. Any records of reports, complaints, and/or subsequent  
16 investigation of reports and/or complaints involving the  
17 falsification of evidence, tendering of false reports, or swearing  
18 out of false evidence, including giving of perjurious testimony, in  
19 proceedings related to any internal investigation conducted by the  
20 officer or agent's agency;

21           9. Any records and/or reports of administrative actions taken  
22 against the officer or agent on the basis of breaches of duty,  
23 violations of departmental or agency rules and regulations;

24           10. Any judicial findings, including findings of fact, findings  
25 made as part of civil or criminal litigation, or findings made in  
26 orders transmitted to the officer's or agent's department or agency  
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1 pertinent to the type of misconduct or unprofessional conduct  
2 covered above.

3 C. Records related to CIs, CDs, officers or agents who may testify  
4 as witnesses in these proceedings and/or who had communications  
5 with any CI/CD between January 2013 and the present are  
6 properly disclosed pursuant to Henthorn and Brady.

7 Mr. Chavez is seeking to compel favorable Brady/Henthorn evidence  
8 for law enforcement agents and officers who: (1) interacted with any  
9 testifying CI/CD between 2013 through the present; and/or (2) will  
10 be called by the government as witnesses in this case, whether at  
11 pretrial hearings or at trial. The government's investigation in  
12 this case involved individuals affiliated with numerous federal task  
13 forces, and this request includes, but is not limited to, task force  
14 officers ("TFOs") from the following organizations: the Federal  
15 Bureau of Investigation ("FBI"); the Drug Enforcement Agency  
16 ("DEA"); the Bureau of Prisons ("BOP"); the Los Angeles County  
17 Sheriff's Department ("LACSD"); the Pomona Police Department  
18 ("PPD"); the California Department of Justice ("CDOJ"); the Ontario  
19 Police Department ("OPD"); the Rancho Cucamonga Police Department  
20 ("RPD"); the Long Beach Police Department ("LBPD") and the  
21 California Department of Corrections and Rehabilitation ("CDCR").

22 While it may be true that the government has no direct  
23 supervisory function in relation to the locally maintained CI files  
24 and/or central/confidential files of CIs/CDs, or the personnel  
25 records of local law enforcement officials, the government certainly  
26 can make reasonable inquiries in an effort to obtain information  
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1 about whether there is favorable, exculpatory or impeaching evidence  
2 pertinent to testifying CIs/CDs and the state and federal law  
3 enforcement officers it intends to offer as trial witnesses and/or  
4 who interacted with testifying CIs/CDs, during the time period  
5 critical to this case. Moreover, where the government depends, in  
6 part, on state, county or local officers and police records to make  
7 its case, its Brady, obligations may require it to provide  
8 information in the files of those agencies relevant to the  
9 proceedings, including CDCR maintained central and confidential  
10 files and law enforcement personnel or disciplinary records:

11  
12 When state police gives a federal investigator access to  
13 its files for the purpose of pulling items of interest to  
14 a federal investigation, Brady requires that the  
15 prosecution team review as well for Brady materials within  
16 the same universe of files. In this instance, separate  
17 sovereignty no longer matters. The reason is that the  
18 state has invited the federal authorities into its file  
19 room and given access to the evidence. Once inside the  
20 stacks with permission to rummage about for prosecution  
21 evidence, the federal authorities must search for and  
22 retrieve defense evidence bearing on the same question.  
The same would hold if the access is only by mere  
requests, i.e., if the local police allow the federal  
prosecutor to make written or verbal requests for records  
searches to be conducted by local officers, then the  
federal prosecutor must ask for all information on the  
same subject, pro and con. This arises not because there  
is an "agency," but because the federal prosecution team  
is given free access to retrieve information and the  
search must be even handed as to the point of inquiry.

23 *United States v. Cerna*, 633 F.Supp.2d 1053, 1059-60 (N.D. Cal. 2009)  
24 (citing *United States v. Price*, 566 F.3d 900 (9th Cir. 2009)). See  
25 also *United States v. Schwartz*, 259 U.S. 59 (2nd Cir., 2001)  
26 (remanding a case for hearing to determine a possible Brady  
27 violation involving a failure to disclose police internal affairs

1 materials); *United States v. Olsen*, 704 F.3d 1172 (9th Cir. 2013)  
2 (in post-conviction context, declining to decide whether federal  
3 prosecutor has Brady duty to obtain and reveal favorable information  
4 contained in state internal investigation file, where non-disclosed  
5 information was immaterial to verdict); and *United States v. Hector*,  
6 CR 04-00860-DDP (C.D. Cal. May 8, 2008), Order Granting New Trial  
7 (new trial necessary to remedy government failure to investigate and  
8 disclose information from local law enforcement investigative file  
9 bearing on credibility of a paid confidential informant).

10 III. CONCLUSION

11 For the reasons outlined herein, this Court should order the  
12 government to review and produce the exculpatory and impeaching  
13 materials, including materials from local CI files, central and  
14 confidential files of testifying CIs/CDs and personnel files, for  
15 all CIs/CDs and law enforcement agents expected to testify as  
16 witnesses in these proceedings and/or law enforcement agents who  
17 have communicated with CIs/CDs between January 2013 and present.  
18 These materials are relevant to the credibility and reliability of  
19 CIs/CDs and law enforcement testimony that the government may  
20 present at pre-trial hearings and/or trial.

21 Respectfully Submitted,

22 Dated: July 7, 2022  
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24 //s// Meghan Blanco  
25 MEGHAN BLANCO  
26 COUNSEL FOR DEFENDANT  
27 GABRIEL ZENDEJAS-CHAVEZ  
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